

# **EXHIBIT 7**

1 ROY THOMAS  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
4

5 GARY FRIEDRICH ENTERPRISES, LLC, et al.,  
6

7 Plaintiffs,  
8

vs.

Civil Action No.

08-CV-01533(BSJ)(JCF)

9 MARVEL ENTERPRISES, INC., et al.,  
10

Defendants.  
11

12 — — —  
13 Videotaped deposition of ROY THOMAS,  
14 VOLUME II, taken on behalf of Defendants, before  
15 Rita A. DeRouen, Registered Professional Reporter  
16 and Notary Public, at the Radisson Hotel, 2100  
17 Bush River Road, Board Room, Columbia, South  
18 Carolina, on the 13th day of April, 2011,  
19 commencing at 11:01 a.m.  
20  
21  
22  
23  
24

25 TSG Job # 37618

1 ROY THOMAS

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21 Also Present: Donald Graves, CLVS

22 Eli Bard, Marvel Entertainment

23 — — —

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2 do any -- much real staff writing in that  
3 madhouse, it was just too noisy and clamorous, and  
4 I wasn't the kind of person who could write under  
5 those circumstances.

6 Q. Were you paid a -- was -- was the  
7 staff writing position a salaried position?

8 A. Yes.

9 Q. And I believe you testified that you  
10 received separate compensation for the freelance  
11 work that you -- for the freelance writing that  
12 you did during this time period?

13 A. Yes. It began almost im --  
14 immediately really.

15 Q. And how were you compensated for the  
16 freelance work that you did?

17 A. Well, without remembering every  
18 single check as to how often, I know there were  
19 just checks that every -- I don't remember if they  
20 were every week or second week, they would have a  
21 separate check that would come in for whatever  
22 work you had vouchered as freelance during that  
23 period.

24 Q. Were -- were you paid based on a --  
25 on a page rate for that work?

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2 individual writer and artist.

3 It generally was a page, more likely  
4 two or three pages, of typed copy that told the  
5 basic story. It didn't break it down into panels  
6 or pages, didn't include much, if any, of the  
7 actual dialogue, but it told the basic story,  
8 which the artist was then supposed to translate  
9 into pictures.

10 Of course, as I said, this was often  
11 done -- increasingly and in various situations, it  
12 was also done verbally without something being  
13 written down. It depended on the relationship  
14 between the artist and the writer. If the artist  
15 really wanted a written plot, he would get one,  
16 some would just as soon not have one.

17 Q. The next step in the process that you  
18 described during your testimony yesterday was  
19 where the artist would break down the plot into  
20 actual pages of the story, quote, adding whatever  
21 he felt he needed to add to flesh out the story.

22 Do you recall that?

23 A. Yes.

24 Q. And you also testified that, at that  
25 point, materials would be what you referred to as

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2 trafficked through the office to various extents?

3 A. Yes.

4 MR. KRAMER: Object to the form of  
5 the question, that misstates his prior testimony.

6 BY MS. KLEINICK:

7 Q. What did you mean by "trafficked  
8 through the office"?

9 A. Well, particularly, it could have  
10 even been that the plot was sent -- was mailed  
11 from the office if the person was in there and  
12 gave -- and turned it in.

13 But, especially by the time the  
14 artist had drawn the pencil drawings, they -- they  
15 had to either mail them or physically bring them  
16 by the office, which meant that the production  
17 manager and a couple of people, you know, working  
18 under him would -- would take care of it, they  
19 would take care of it so that it went to the next  
20 person, which was generally the letterer unless  
21 Stan or I or someone said that they needed to see  
22 the script or the artwork before it went to --  
23 before it went to the letterer.

24 Again, that depended on the trust in  
25 the artist and various other factors as to how

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2 closely and at what stage something was looked  
3 at.

4 Oh, and I also stated yesterday that  
5 trafficking sometimes was just verbal directions  
6 and that the artist might be told, to save time,  
7 to -- and some of them just hand-delivered it  
8 because they were neighbors or whatever, to give  
9 the art directly to -- the art and the script  
10 directly to the letterer.

11 Once the -- I'm sorry, maybe I  
12 misstated. First we had to have the art come back  
13 to the office for the writer to do the dialogue,  
14 and that went -- then it went to the letterer. In  
15 each -- in each step it was trafficked by the  
16 office either physically or by phone.

17 Q. I think that you testified that the  
18 -- that after the materials went to the  
19 letterer --

20 A. Uh-huh.

21 Q. -- then it would go -- they would go  
22 to the inker; is that correct?

23 A. Yes. Either directly mailed by the  
24 letterer or maybe delivered to him if -- or picked  
25 up by him or trafficked through the office, either

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2 basis on his own, he might be thinking a little  
3 ahead.

4 Of course, that was then subject to  
5 my or to Stan Lee's veto when they suggested a  
6 story line. It was certainly not part of their  
7 job to do.

8 BY MS. KLEINICK:

9 Q. I asked you -- my question was: Are  
10 you aware of any instance where that happened?

11 A. I'm -- I'm not aware of any instance  
12 where it happened.

13 Q. To your knowledge, at any point  
14 between July of 1965 and the end of 1972, did  
15 Marvel ever buy a plot or synopsis or script that  
16 was created on spec by a freelance writer or  
17 artist?

18 MR. KRAMER: Object to the form, lack  
19 of foundation.

20 THE WITNESS: I -- I can't think of  
21 one.

22 BY MS. KLEINICK:

23 Q. During the time period between July  
24 of 1965 and the end of 1972, after a writer --  
25 strike that.

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2 During the time period between July  
3 of 1965 and the end of 1972, were there any  
4 production deadlines set with respect to the comic  
5 book issues that were being published by Marvel?

6 MR. KRAMER: Object to form, lack of  
7 foundation.

8 THE WITNESS: They always had  
9 deadlines. Everything -- everything had a  
10 deadline really.

11 BY MS. KLEINICK:

12 Q. Do you know who set those deadlines?

13 A. They were set on behalf of the -- the  
14 editor, Stan Lee, until maybe the very end of that  
15 period by the production manager on -- on the  
16 editor's authority.

17 Q. And were there any restrictions on  
18 the number of pages for particular comic books  
19 during this time period?

20 MR. KRAMER: Object to form, lack of  
21 foundation.

22 THE WITNESS: Most of the stories had  
23 a definite page length, which would vary from time  
24 to time, 20, 21, or whatever pages. We did have a  
25 few stories -- comics we called mystery comics

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2 with -- without continuing characters in which  
3 there was more flexibility, it might be a five-  
4 page story, a seven-page story, or whatever.

5 The writer was generally given some  
6 page length when he was told to write the story.  
7 Occasionally he might find some excuse and get  
8 approval to vary it, but there was -- there was  
9 always some sort of limitation there.

10 BY MS. KLEINICK:

11 Q. And during the July of 1965 to the  
12 end of 1972 time period, who, if anyone, at Marvel  
13 decided which books would be published?

14 MR. KRAMER: Object to form and  
15 foundation.

16 THE WITNESS: It was always -- the  
17 ultimate say, as far as I know, was the publisher,  
18 who, up through most -- through most of that time  
19 was Martin Goodman, both before and for some time  
20 after he sold the company.

21 There was a period near the end of  
22 that time for a year or so, maybe it was a little  
23 less than that year, not too much more, when his  
24 son, Charles Chip Goodman, was the -- was the  
25 publisher, and he had that decision.

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2 That would have been at the very end  
3 of that period. Stan increasingly had authority  
4 to do things, but it was always rather vague. He  
5 still ultimately had to have the publisher's  
6 authority to start a book or kill a book or do  
7 anything of that sort.

8 BY MS. KLEINICK:

9 Q. What do you mean by "start a book"?

10 A. To authorize a new comic book title  
11 as opposed to an existing one.

12 Q. When you were the assistant editor at  
13 Marvel, did you have authority to make changes to  
14 the materials that were submitted for publication  
15 by a freelance writer or artist if you believed  
16 changes were appropriate?

17 MR. KRAMER: Object to form and  
18 foundation.

19 THE WITNESS: I have to ask, did you  
20 mean strictly assistant or after I was also called  
21 associate editor after about '66 or '67? I wanted  
22 to make sure when I answered it.

23 BY MS. KLEINICK:

24 Q. I was referring just to the period  
25 when you were assistant editor.

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2 things when he felt there was a good reason, it  
3 wasn't a good enough name or something along those  
4 lines, something might come to his attention.

5 Q. You testified that between July of  
6 1965 and the end of 1972 freelance writers were  
7 paid based on a page rate for the writing that  
8 they did for Marvel; is that correct?

9 A. Yes.

10 Q. Do you know who established the page  
11 rate that any particular writer would be paid  
12 during this time period?

13 MR. KRAMER: Object to form, lack of  
14 foundation.

15 THE WITNESS: Ultimately, it was the  
16 publisher. Stan could make recommendations. And  
17 I believe, again, his recommendations were maybe a  
18 little more -- had a little more force as time  
19 went on, but it was ultimately the publisher's  
20 responsibility, they all had to be approved by  
21 him, whether it be either Martin Goodman or Chip  
22 Goodman.

23 BY MS. KLEINICK:

24 Q. For the period from July 1965 to the  
25 end of '72, with respect to your freelance writing

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2 work, were there any general time frames in  
 3 relationship to time that the issue was dialogued  
 4 that you were paid with respect to that issue?

5 MR. KRAMER: Object to form.

6 THE WITNESS: It would depend on when  
 7 I managed to get the -- the voucher in. It was my  
 8 responsibility, as it was other writers, to fill  
 9 out vouchers and put them in, and they would go  
 10 down -- go to be signed at some stage during the  
 11 week and then we would be paid.

12 Generally speaking, if I recall  
 13 correctly, we usually put in the writing rate  
 14 after the whole thing was written as opposed to  
 15 putting in something when the plot was turned in.

16 BY MS. KLEINICK:

17 Q. During this time period, with respect  
 18 to your freelance writing work, were you typically  
 19 paid before the issue hit the stands?

20 A. Usually I would have been because  
 21 they -- because by the time I -- from the time  
 22 that I might have finished the story until it was  
 23 on sale was going to be at least two or three  
 24 months, possibly a little more, possibly even a  
 25 couple of months more.

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2 So if -- even if I missed a pay  
 3 period, it was only going to be a couple weeks or  
 4 so, two or three weeks, before I was paid. So I  
 5 was almost always paid before it was on sale.

6 Q. And during this time period with  
 7 respect to your freelance writing work, did you  
 8 receive the same page rate regardless of whether  
 9 the issue ultimately sold well or not?

10 A. Yes, I did.

11 Q. Do you have any understanding of  
 12 whether other freelance writers who submitted  
 13 materials to Marvel during this time were also  
 14 paid the same -- their same page rate regardless  
 15 of whether the issue they worked on ultimately  
 16 sold well or not?

17 MR. KRAMER: Objection. Object to  
 18 form and lack of foundation.

19 THE WITNESS: Yes. It was a straight  
 20 page rate system.

21 BY MS. KLEINICK:

22 Q. When you first joined Marvel in the  
 23 -- in 1965, was it your understanding that the  
 24 materials that you were submitting for publication  
 25 as a freelance writer were works-for-hire owned by

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2 hire," but it was just another term for the way I  
3 felt I had been working all along.

4 Q. So what you understood -- or your  
5 understanding was that the work that you were  
6 creating, to the extent you would have any rights  
7 in it, you were giving those rights up to  
8 Marvel --

9 MS. KLEINICK: Objection.

10 BY MR. KRAMER:

11 Q. -- at all times?

12 MS. KLEINICK: Mischaracterizes his  
13 testimony.

14 THE WITNESS: The back of the check  
15 said that I was -- that by signing the check I was  
16 signing over my rights to -- to Marvel.

17 BY MR. KRAMER:

18 Q. And later, in the mid 1970s when the  
19 term "work-for-hire" started banging around, you  
20 understood that to refer to the same general  
21 situation that had already existed?

22 MS. KLEINICK: Objection.

23 THE WITNESS: Yes, I did.

24 BY MR. KRAMER:

25 Q. And do you understand that work-for-

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2 C E R T I F I C A T E

3

4

5 SOUTH CAROLINA:

6

RICHLAND COUNTY:

7

8

9 I hereby certify that the foregoing  
10 deposition was reported, as stated in the caption,  
11 and the questions and answers thereto were reduced  
12 to that written page under my direction; that the  
13 foregoing pages 1 through 168 represent a true and  
14 correct transcript of the evidence given. I  
15 further certify that I am not in any way  
16 financially interested in the result of said case.

17 Pursuant to Rules and Regulations of  
18 the Board of Court Reporting of the Judicial  
19 Council of South Carolina, I make the following  
20 disclosure:

21 I am a South Carolina Court  
22 Reporter. I am here as an independent contractor  
23 for TSG Reporting.

24 I was contacted by the offices of  
25 TSG Reporting to provide court reporting services

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2 for this deposition. I will not be taking this  
3 deposition under any contract that is prohibited  
4 by O.C.S.C.A. 15-14-7 (a) or (b).

5 I have no written contract to  
6 provide reporting services with any party to the  
7 case, any counsel in the case, or any reporter or  
8 reporting agency from whom a referral might have  
9 been made to cover this meeting. I will charge  
10 my usual and customary rates to all parties in the  
11 case.

12 This, the 18th day of April, 2011.

13   
14

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15 RITA A. DEROUEN

16 My Commission Expires

17 August 12, 2019

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